

## **REMARKS**

Claims 1-21 have been placed under a restriction requirement under PCT rule 13.1 and 37 CFR 1.499 in the Office Action.

### **SUMMARY OF THE EXAMINER'S POSITION**

Specifically, the Examiner has identified the following inventions:

Species I: Hearing aid/sound output device: Claims 1-5, 16-18 and 21.

Species II: Training/gaming device: Claims 6-15, 19 and 20.

The Examiner has required restriction to one of the inventions for examination. The Examiner has taken the position that in his view, these inventions are independent or distinct, and a restriction for examination purposes is proper because, in his view, species I relates to improving the hearing of a user and species II relates to receiving a response from a user and outputting an appropriate response with respect to the perceived response.

### **DISCUSSION**

Applicant respectfully traverses the restriction requirement in the above-identified Office Action, and requests reconsideration and withdrawal thereof. Applicant respectfully suggests that the claims are all drawn to related aspects of a single inventive concept, and should not be subject to restriction. It is respectfully submitted that the Examiner has provided evidence of the unity of invention in the restriction requirement since the reason for restriction admits that the user employs the hearing aid in both species thus joining the species. Simply, the species are product and process of using the product and thus are considered to have unity of invention under 37 CFR 1.475.

It is respectfully submitted that 37 CFR 1.475(b) states: An international or a national stage application containing claims to different categories of invention *will be considered to have unity of invention* if the claims are drawn only to one of the following combinations of categories:

(1) A product and a process specially adapted for the manufacture of said product; or

- (2) A product and a process of use of said product; or
- (3) A product, a process specially adapted for the manufacture of the said product, and a use of the said product; or
- (4) A process and an apparatus or means specifically designed for carrying out the said process; or
- (5) A product, a process specially adapted for the manufacture of the said product, and an apparatus or means specifically designed for carrying out the said process.

It is respectfully submitted that the species designated by the restriction requirement are product and a process of use of said product as set forth in (2) above and thus are considered to have unity of invention.

Further, even if the Examiner remains convinced that the claims are not all drawn to a single inventive concept, applicant respectfully suggests that all of the pending claims are drawn to closely associated inventions.

It is respectfully submitted that the International Searching Authority or the International Preliminary Examining Authority should not raise objection of lack of unity of invention merely because the inventions claimed are classified in separate classification groups or merely for the purpose of restricting the international search to certain classification groups. Unity of invention exists when there is a **technical relationship** among the claimed inventions involving one or more of the same or corresponding **special technical features**.

The expression "special technical features" is defined as meaning those technical features that define a contribution which each of the inventions, considered as a whole, makes over the prior art. It is respectfully submitted that the hearing aid is the special technical feature that join the invention and provides evidence of unity of invention as required. The device in species II will not operate without the hearing aid portion of species I. In addition, the specification clearly describes the use of the hearing aid signal in the training method.

Applicant respectfully suggests that the examination of the entire application would not place a serious burden on the Examiner. It is respectfully submitted that the Examination of the instant application would appear to require the same search for each of the groups deemed separate by the restriction requirement.

Therefore, applicant respectfully requests reconsideration and withdrawal of the Restriction Requirement.

However, notwithstanding the above comments, in order to comply with Patent Office requirements, (again) applicant has elected, with traverse, species II, including claims 6-15, 19 and 20.

If any issues remain unresolved, or if the Examiner feels that the prosecution of the present application could be advanced by a telephone discussion, applicant respectfully requests that the Examiner telephonically contact the undersigned representative to resolve such issue(s) and move forward with the prosecution of the application.

Favorable reconsideration is respectfully requested.

Respectfully submitted,



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